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TAGS: [PGOV](#) [PINR](#) [KJUS](#) [KDEM](#) [NI](#) [ELECTIONS](#)  
SUBJECT: NIGERIA: ELECTION TRIBUNALS (PART II) -  
GUBERNATORIAL CHALLENGES

REF: A. ABUJA 1397  
[1](#)B. ABUJA 922

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This cable is the second in a series on the election tribunal  
process following the April 14 state and April 21 national  
elections.

[1](#)1. (SBU) SUMMARY. The results of the April 14 gubernatorial  
elections are being contested in specially established state  
election tribunals (Ref. A). While most gubernatorial  
election tribunals have yet to convene, petitions from  
aggrieved candidates and parties, including the ruling  
People's Democratic Party (PDP) and major opposition parties  
All Nigeria People's Party (ANPP) and Action Congress (AC),  
have been filed nation-wide. INEC refusal to surrender  
elections-related materials to the tribunals is largely to  
blame for the delays. Petitioners fear a repeat of 2003  
election tribunals, which were plagued by delays and in the  
end often dismissed the cases on technical grounds or found  
the elections were substantially in line with the law.  
Meanwhile, recent Supreme Court rulings on former Vice  
President Atiku's candidacy and the length of term of Anambra  
Governor Peter Obi have provided hope for an impartial and  
fair hearing of the petitions. Moves by the Yar'adua  
administration to establish a government of national unity  
have further muddled the waters though, as some fear that  
establishing a unity government will undermine support for  
the petitions filed by Buhari and Atiku. END SUMMARY.

[1](#)2. (SBU) Three months after INEC announced winners of the  
gubernatorial and presidential elections, most state election  
tribunals have not begun hearing petitions due in part to  
technical or procedural glitches. More so, however, the  
sluggish pace of proceedings is due to the unwillingness of  
the Independent Electoral Commission (INEC) to surrender  
elections-related materials, including tally and result  
sheets, ballot papers and boxes, voter registers, and lists  
of staff present at polling stations, for inspection by  
petitioners. On a federal level, INEC Chairman Maurice Iwu  
has maintained that because he has not been served personally

as a respondent, the INEC does not have to cooperate with the tribunal proceedings. Plaintiffs argue that Iwu is purposefully evading being served in order to contravene court orders. Nonetheless, Iwu's actions have set the tone at the state level and complainants in Edo, Ondo, Ogun, Kogi, and Abia States (among others) allege that state INEC resident electoral commissioners are similarly either eluding personal service or preventing the examination of elections-related documentation. Without access to INEC documents or officials, petitioners cannot judiciously proceed with their cases. Recognizing the intransigence of certain respondents, petitioners are now approaching the tribunals to obtain orders for substitute service to respondents.

13. (SBU) Many petitioners fear that the 2007 election tribunal process will be a repeat of 2003. In the aftermath of Nigeria's 2003 gubernatorial elections, which were considered marred by irregularities and electoral fraud, most petitions to the election tribunals were either jettisoned on technical grounds or the tribunals ruled that elections had been "substantially" conducted according to the 2002 Electoral Act. Only petitions filed in Adamawa and Anambra States, notwithstanding protracted deliberation, resulted favorably for the plaintiffs. In the case of Adamawa State, Boni Haruna's announcement as winner of the gubernatorial race was initially nullified by the Adamawa Election Tribunal, though this ruling was later overturned by the Federal Court of Appeal which ruled that the conduct of elections, though flawed, still complied "substantially" with electoral laws. With respect to Anambra State, All Progressive Grand Alliance Party (APGA) candidate Peter Obi sought redress at the Anambra Election Tribunal, decrying as flawed the electoral process that brought Chris Ngige to power. The tribunal eventually upended Ngige's election and declared Obi governor. At the national level, Buhari spent

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thirty months in court only to have the Supreme Court uphold the 2003 election results.

14. (SBU) While the Federal Court of Appeal, presided over by Justice Abdullahi Umaru, who presided over the same court in 2003 and who appoints justices to the gubernatorial election tribunals in each of Nigeria's thirty-six states, is regarded by some as thoroughly compromised and vulnerable to the machinations of the Yar'adua administration, the Supreme Court has, as of late, shown promising signs of impartiality and fairness. On April 16, the Supreme Court ruled that INEC has no "Constitutional power to disqualify a candidate from contesting elections without a valid order of a court." This ruling paved the way for Atiku's name to be placed on the ballot on April 21. Based on the precedent set in this case, candidates including Ibrahim Bapetel (AC, Adamawa State), Abubakar Audu (ANPP, Kogi State), and Peter Okocha (AC, Delta State) who were disqualified by INEC prior to the April 14 gubernatorial elections are seeking to nullify elections in those states. Moreover, on June 14, the Supreme Court ruled in favor of Anambra State Governor Peter Obi, contending that his tenure as governor commenced the day of his swearing-in -- March 10, 2006. Obi's term in office was ruled to expire in 2010. The April 2007 elections in which Andy Uba was declared Governor of Anambra State were therefore judged to be null and void.

15. (SBU) Uncertainty also persists on the possible impact of recent unity government talks on the fate of the presidential election tribunal petitions. Press reports indicate that talks continue between the Yar'adua administration, ANPP and AC over the formation of a national unity government, with all three parties maintaining that the presidential election tribunal petitions filed by ANPP and AC need not be withdrawn. That said, there is concern among Buhari's supporters that a full endorsement of Yar'adua's government by the ANPP may imperil Buhari's election tribunal petition, leading financiers and advisors to withdraw support as they

had done in 2003. Others note that should Buhari and Atiku consolidate their petitions, either by volition or court directive, this would substantially fortify their position. It remains to be seen, however, whether such a scenario is deemed salutary to their distinct self-interests.

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